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Remarks

Claims 1 - 27 are presented for Examiner's consideration. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

The Applicants have amended the specification above to correct a misspelling. The Applicants have amended claims 1, 5, 7, 14, and 21 as indicated. The Applicants have submitted new claims 22 - 27. No new matter is introduced by the claim amendments, which are supported by the original claims and throughout the specification. The provisional double patenting rejection over claims 1 -21 of copending application 10/026,197 is noted by the Applicants. The Applicants traverse the provisional double patenting rejection, but will defer argument until patentable subject matter is indicated by the Examiner.

§ 112 Objections

Claims 14 - 20 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite. The Office Action states that the term "low strength barrier material" is relative and therefore indefinite. The Applicants have amended claim 14 by deleting the words "low strength". As such, the basis for the objection has been overcome.

§ 102 Rejections

Claims 1 - 2, 5, and 7 stand rejected under 35 U.S.C. § 102(b) as anticipated by WO 99/45834. WO '834 discloses a commode liner that must be made out of paper. The application states at page 1, sixth paragraph:

In particular the container must have an open side, corresponding to the open surface of the toilet or of the other devices, and for the rest must be closed. This shape allows restraining the feces, **while the organic liquids are able to trespass due to the permeability of the paper**, of which the container is made. (emphasis added)

The application further states at page 5, fourth paragraph:

The container **must be manufactured with paper**, even recycled, permeable and biodegradable, but able to resist to the passage of liquids and to the collecting of human feces without crumbling for some minutes. (emphasis added)

The paper containers enabled by the WO '834 leak. Additionally, containers formed from certain paper materials, including tissue, caused the obstruction of drain pipes when flushed. See page 6, paragraphs 2 - 6.

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The Applicants have amended claims 1 and 5 to recite that the material forming the first and second opposing members has a hydrohead value of at least about 15 mbar. WO '834 does not disclose or enable materials having the recited hydrohead value. To anticipate a claim, the reference must teach every element of the claim. See MPEP § 2131.01. As such, the amended claims are not anticipated by WO '834.

§ 103 Rejections

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion must be found in the prior art, and not based on applicant's disclosure. See MPEP § 2143.

Claims 1 - 10 and 21 stand rejected under 35 U.S.C. 103(a) as obvious in view of WO '834. A *prima facie* case of obviousness has not been established for at least three reasons. First, WO '834 teaches away from the Applicants claims. WO '834 teaches that the containers should be porous or liquid pervious. The Applicants' commode liner claims a specific hydrohead value as a measure of its impermeability. While WO '834 makes passing reference to an impermeable material in the last paragraph on page 5, there is no information provided as to what a suitable impermeable material is or what properties it should have. The specific claimed hydrohead value is neither taught nor suggested. Finally, WO '834 teaches that containers made from an impermeable material are not suitable for flushing. Rather they must be disposed of in an appropriate dustbin. See page 5, last paragraph. The Applicants' commode liner and material not only flushes, but disperses as tested by the disclosed test methods.

Second, WO '834 fails to teach or suggest all of the claimed limitations. In particular, there is no information that the container in WO '834 is either flushable or dispersible as claimed in claims 3, 4, and 6. Regarding the Container Flush Test, the test requires the use of a low flow 1.6 gallon flush toilet and a lateral piping system. Additionally, 300 ml of saline and 10 sheets of toilet paper are placed in the commode liner prior to flushing. The Applicants have found that such a test renders many previously "flushable" containers or commode liners unflushable. The low volume toilet, which is now standard in new construction, is especially prone to clogging and any excess material, such as a commode liner, strains the flushing ability of the toilet with its limited water supply. Thus, careful attention must be placed on the design of the commode liner including the materials used and the geometric shape.

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With regard to the Container Dispersibility Test, the test measures the dispersibility of the container under flow conditions found in sewer lines - namely 2 feet/second. This low flow test condition means the material must disperse without the benefit of high rates of mechanical shearing or turbulence. Regarding claim 9, there is no teaching or suggestion of the claimed capacity in WO '834. Regarding claim 21, there is no teaching or suggestion of the claimed CD maximum wet tensile load in WO '834.

Third, WO '834 fails to enable one of ordinary skill in the art to select proper materials having the Applicants' claimed properties without undo experimentation. In particular, the disclosure recites several paper materials that either leaked or plugged up the drain pipes. See page 6, paragraphs 2 - 6. There is no teaching or suggestion to enable one of ordinary skill in the art to select the material disclosed by the Applicants and to design a commode liner as claimed by the Applicants.

Claims 1 - 10, and 21 stand rejected under 35 U.S.C. 103(a) as obvious over DE 200 16 916 in view of CA 819,353. DE '916 discloses a paper insert for chemical toilets. The paper insert is free of chemical pulp and is biodegradable. The inserts are used to prevent soiling of the chemical toilet's bowl. See the attached translation submitted with a Communication included with this response. CA '353 discloses a bed pan liner formed from polythene sheets that are heat sealed together. The patent further discloses that the soiled bed pan liners are stored in a bucket. They are then emptied of urine and burnt for disposal instead of being flushable and dispersible as claimed by the Applicants teaching away from the Applicants' claimed invention. See page 4, lines 13 - 23. The Office Action asserts it would have been obvious to use the joining method disclosed in CA '353 with the toilet liner disclosed in DE '916.

A *prima facie* case of obviousness has not been established since the proposed combination fails to teach or suggest all of the claim limitations. There is no teaching or suggestion of the claimed hydrohead value, flushability, dispersibility, capacity, or maximum CD wet tensile load when the references are combined as suggested by the Examiner. The paper commode liner as disclosed in DE '916, even if two sheets are joined together as disclosed in CA '819, will leak and not possess the other claimed properties. Again, the proposed combination teaches away from the Applicants' invention since the paper will leak and the polythene is not flushable or dispersible and must be incinerated.

Claims 1 - 21 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. 6,514,602 issued to Zhao in view of WO '834 or in view of DE '916 and CA '353. Zhao discloses a water flushable biodegradable film comprising a water-soluble thermoplastic polymer, a water insoluble biodegradable thermoplastic polymer, and an optional but preferred water permeable layer.

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A *prima facie* case of obviousness has not been established since either proposed combination fails to teach or suggest all of the claim limitations. In particular, Zhao discloses that the films of the present invention have a percent elongation at break in either the MD or CD direction (preferably both directions) of at least about 150%, preferably at least about 200% and most preferably at least about 250%. See column 7, lines 26 - 31. This teaches away from the Applicants' claimed invention wherein the exterior surface is characterized by an inextensible support layer. See claim 14. Inextensible is defined at page 5 as having a machine direction stretch of less than 15%. Therefore, the films of Zhao stretch at a minimum **ten times** as much as claimed by the Applicants. The Applicants teach that such extreme stretching can lead to bursting or leaking from rupture of the barrier layer. See page 11, lines 18 - 26. Removing a heavily loaded commode liner from a commode for disposal in a toilet places an extreme stress on the thin commode liner material, which is necessary for flushability and dispersibility. Failure, rupture, or leaking of the commode liner during this critical transition period is a very unpleasant experience.

Regarding claims 12, 13, 15, and 19, Zhao does not suggest or teach tissue as a suitable support layer as claimed by the Applicants. Rather, Zhao discloses a mixture of a thermoplastic water-insoluble polymer and a thermoplastic water soluble polymer for use as the optional water permeable layer. The Applicants have discovered and disclosed that thermoplastic polymers can be tacky in aqueous environments and stick to the toilet during flushing leading to flushing failures. Additionally, thermoplastic polymers do not wick water. This wicking not only provides a visual cue of flushability, but also increases the wet flexibility of the commode liner enabling it to readily pass through the toilet's discharge outlet. Without wicking, several flushes of the toilet may be necessary to saturate the entire commode liner before enabling it to pass through the discharge outlet - especially when stuck to the toilet by use of a thermoplastic polymer exterior layer.

Furthermore, although Zhao at column 11, lines 13 - 24, provides a "laundry list" of suitable applications for the film, Zhao fails to recite that the film is suitable for use as a commode liner. Thus, one of ordinary skill reading Zhao would conclude that the film is not suitable for a commode liner in view of this omission and the large stretch properties of the film that are disclosed. Thus, there is no motivation for one of ordinary skill in the art to combine Zhao as suggested by the Examiner.

Combining Zhao with WO '834 fails to cure the deficiencies in WO '834 and further teaches away from the Applicants' claimed invention. Similarly, combining Zhao with DE '916 and CA '353 fails to cure the deficiencies in the previous combination and again further teaches away from the Applicants' claimed invention.

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For the reasons stated ab v , it is respectfully submitted that all of the presently presented claims are in form for allowance. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7760.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE

I, Lanette Burton, hereby certify that on July 21, 2003, the aforementioned documents are being transmitted via facsimile to the United States Patent and Trademark Office in Alexandria, VA 22313-1450 to Right Fax Number 703/872-9310.

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